



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 28 1987

MEMORANDUM

SUBJECT: Procedures for Pre-Referral Settlement of Asbestos Demolition and Renovation Cases

FROM: Thomas L. Adams, Jr. *Thomas L. Adams*
Assistant Administrator for Enforcement
and Compliance Monitoring

J. Craig Potter *J-CR Potter*
Assistant Administrator
for Air and Radiation

TO: See Below

We appreciate your active development of asbestos demolition and renovation cases for litigation. To reinforce the litigation program, we are establishing procedures designed to expand your options for addressing the large number of violating asbestos demolition and renovation sources. These procedures should enable you, in many instances, to resolve a violation quickly and to obtain a civil penalty without a major commitment of resources.

Introduction

Sources which violate the National Emission Standard for Asbestos require enforcement action by EPA or a delegated State agency. A large number of federal court actions have been filed against asbestos sources, particularly since the issuance of the asbestos enforcement strategy on April 6, 1984. Nearly one-third of all new Clean Air Act cases referred to the Department of Justice in the last two fiscal years have involved the asbestos regulations. These cases deal almost exclusively with demolitions and renovations, the most prevalent sources of asbestos emissions.

Notwithstanding this effort, the vast majority of asbestos demolition and renovation violations inevitably are addressed without judicial enforcement. EPA and delegated State agencies typically find violations at over 1000 sites a year, of which

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about 5% become the subject of judicial enforcement. The rest are handled through issuance of a finding or notice of violation or an administrative order. Although some State agencies have administrative penalty authority, nearly all of these actions are taken without assessment of any penalties.

To help you maintain or increase the high level of judicial enforcement without placing an undue strain on resources, we hope to facilitate negotiation of a judicial consent decree prior to referral of a matter for filing in court. By adhering to these procedures, you may enter into pre-referral negotiations with a high degree of confidence that settlements will be approved by the Assistant Administrator for OEMC and the Assistant Attorney General for Land and Natural Resources. If negotiations are successful, you will be able to refer a "pre-settled" case to the Department of Justice (DOJ) for the simultaneous filing of a complaint and lodging of a consent decree in the appropriate district court.

Procedures

After selecting a particular matter to try to resolve prior to case referral, you should take the following steps prior to initiating negotiations:

- 1) Develop a Regional position on a bottom-line civil penalty settlement amount in accordance with the asbestos demolition and renovation civil penalty policy, issued on February 8, 1985.

- 2) Obtain concurrence in the bottom-line penalty and other settlement terms from OEMC and DOJ. The Region should forward its recommendation to the Associate Enforcement Counsel in the Air Enforcement Division (AED), as well as to the appropriate Assistant Chief of the Environmental Enforcement Section at DOJ. AED will forward a copy of the recommendation to the Stationary Source Compliance Division in accordance with established procedures for consultation. The recommendation should include a brief description of the matter, including a discussion of any prior violations and enforcement history, and should be accompanied by a copy of the inspection report and any other documentation of violations, and a work sheet showing the calculation of the penalty settlement figure. The basis for adjustments of the preliminary deterrence amount (sum of benefit and gravity components) must be explained, e.g., financial information supporting a penalty reduction based on ability to pay.

AED and the Assistant Chief at DOJ will indicate their concurrence or non-concurrence with the proposed action within 15 working days of receipt of the materials. Once a consensus has been reached, the Region may begin negotiations with the prospective defendants. The Region may fully negotiate a settlement,

subject to final approval, without further consultation with AED and DOJ so long as the negotiated penalty is at least as much as the bottom line which has been established. Reductions in the minimum settlement amount can only be made with the concurrence of AED and DOJ.

If negotiations are successful, please have the prospective defendants execute a consent decree. A model consent decree is attached and may be used as a basis for settlement without consultation with OECM or DOJ. Compromises of substantive provisions in the model decree made during the course of negotiations must be cleared with OECM and DOJ.

The Region must forward the original decree, once signed by the company, to EPA Headquarters for the signature of the Assistant Administrator for Enforcement and Compliance Monitoring. The Region should also refer directly to the Department of Justice, with a copy to OECM, an abbreviated litigation report, including a draft complaint, and should indicate that the complaint can be filed upon receipt of the signed consent decree from EPA. A model complaint and an outline of an abbreviated litigation report are attached. The model litigation report is consistent with the "Model Litigation Report Outline and Guidance" (GM-48), January 30, 1986.

If a settlement in principle is not reached within 60 days after you initiate negotiations, the Region should develop a referral to DOJ for litigation. In such instance, the Region should prepare a full litigation report, including a description of the contacts between EPA and the prospective defendants.

In cases in which some but not all prospective defendants are willing to settle, you should follow the guidance in the asbestos civil penalty policy regarding apportionment of the penalty among multiple defendants. If you successfully negotiate with some parties, a consent decree with those parties should be handled as described above and the matter should be referred to DOJ for litigation against the remaining parties.

The success of this effort will depend to a great extent on adherence to the civil penalty policy and to the model consent decree. Although the model decree provisions are intended as guidance and not as requirements, the Region should consult with OECM and DOJ about any significant departures from the model provisions before making commitments regarding them. The Region may generally negotiate independently of AED and DOJ if it stays within the bounds of the model and the bottom line penalty figure. All consent decrees must still be signed by the AA for OECM and the Assistant Attorney General, who retain approval authority. Therefore, the Region should continue to make appropriate caveats in their settlement discussions.

We are instituting these procedures on a trial basis. We will reevaluate the program in approximately one year and determine if any modifications are needed.

Questions regarding this matter should be directed to Elliott Gilberg of the Air Enforcement Division at FTS 382-2817.

Attachments

Addressees:

Regional Administrators
Regions I-X

Regional Counsels
Regions I-X

Air and Waste Management Division Director
Region II

Air Management Division Directors
Regions I, III, and IX

Air and Radiation Division Director
Region V

Air, Pesticides, and Toxics Management Division Directors
Regions IV and VI

Air and Toxics Division Directors
Regions VII, VIII, and X

cc: John S. Seitz, Director
Stationary Source Compliance Division

David Buente, Chief
Environmental Enforcement Section
Department of Justice

Scott Fulton, Assistant Chief
Environmental Enforcement Section
Department of Justice

Outline

Model Abbreviated Litigation Report Asbestos Demolition/Renovation Cases

I. Cover Page

- A. Region, statute involved (Clean Air Act), judicial district
- B. Name and address of defendants
- C. Name and address of facility demolished or renovated
- D. Regional contacts (program/legal)
- E. Stamp date Region refers report

II. Table of Contents

III. Description of Case

- A. Indication that case has been pre-settled and that complaint should be filed concurrently with lodging of consent decree
- B. Brief description of demolished or renovated facility and of each defendant, including state of incorporation and principal place of business, agent for service of process, legal counsel (if any), and identity of defendants by role, e.g., owner of facility, primary demolition contractor, subcontractor for asbestos removal, etc.
- C. Identity of other potential defendants who are not parties to consent decree
- D. Brief description of alleged violations, with citations to inspection report if useful, including dates and duration of violation
- E. Reason violations cited in inspection report are not included (if applicable)

IV. Statutory Bases of Referral

A. Applicable statutes and cross-media coordination (e.g., if asbestos waste material requires cleanup)

B. Enforcement authority; jurisdiction and venue

V. Enforcement History of Defendant and Pre-referral Negotiations

A. Chronology of contacts with defendants regarding violations which are subject of consent decree, including administrative orders and findings of violations

B. Summary of pre-referral negotiations

C. Contacts with defendant by State or local agencies and actions taken; indication of whether program is delegated to State and, if so, why EPA is taking enforcement action, e.g., State request, inadequate State penalty

D. Prior Enforcement History of Defendants

Discussion of any prior enforcement against any defendant by EPA or delegated State or local agency, if known

Indication of sources consulted for information - e.g., CDS, national contractor registry, internal Regional tracking system

VI. Injunctive Relief

Summary of injunctive relief provisions in consent decree

VII. Civil Penalties

Indication of civil penalty provision in consent decree (penalty worksheet should be an attachment to litigation report)

Basis for adjustments in preliminary deterrence amount (or refer to worksheet if discussed there)

VIII. Major Issues

Discussion of issues of national or precedential significance

IX. Significance of Referral

Justification for referral, e.g., Agency priority, Regional initiative, previous violations by defendant

X. Attachments

A. Index to attachments

B. Draft complaint

C. Signed consent decree

D. Documentation of violations - inspection report, etc.

E. Settlement penalty worksheet

F. Financial information if penalty reduced based on ability to pay

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,

PLAINTIFF,

v.

AMALGAMATED PROPERTY OWNERS, INC.,

and

XYZ DEMOLITION CONTRACTORS, INC.,

DEFENDANTS.

CIVIL ACTION NO.

COMPLAINT

The United States of America, by and through its undersigned attorneys; by authority of the Attorney General of the United States and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

INTRODUCTION

1. This is a civil action against Defendants Amalgamated Property Owners, Inc., and XYZ Demolition Contractors, Inc. for injunctive relief and civil penalties pursuant to Section 113(b) of the Clean Air Act (the "Act"), 42 U.S.C. §7413(b), for violations by defendants of the National Emissions Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, promulgated under Sections 112 and 114 of the Act, 42 U.S.C. §§7412 and 7414, codified at 40 C.F.R Part 61, Subpart M.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. §7413(b).

3. Venue is proper in this judicial district under Section 113(b) of the Act, 42 U.S.C. §7413(b), because the violations occurred in this district [and Defendants have their principal places of business in this district.]

4. Notice of the commencement of this action has been given to the State of Louisiana Department of Environmental Quality as required by 42 U.S.C. §7413(b).

DEFENDANTS

5. Defendant Amalgamated Property Owners, Inc., (APO) is a corporation organized under the laws of the State of Delaware. APO is authorized to do business in the State of Louisiana. APO owns the facility where the violations took place.

6. Defendant XYZ Demolition Contractors, Inc. (XYZ) is a corporation organized under the laws of the State of Louisiana. Its principal place of business is Shreveport, Louisiana. XYZ is engaged in the business of demolition and renovation of buildings and demolished the facility where the violations took place.

7. Defendants each were, at all times relevant hereto, an "owner or operator" of a demolition operation as that term is defined in Sections 111(a)(5) and 112(a)(3) of the Act, 42 U.S.C. §§ 7411(a)(5) and 7412(a)(3), and 40 C.F.R. §61.02 and 61.141.

8. Each of the Defendants is a "person" within the meaning of Section 302 of the Clean Air Act, 42 U.S.C. §7602(e).

STATUTORY AND REGULATORY BACKGROUND

9. Section 112(b) of the Act, 42 U.S.C. §7412(b), requires the Administrator of EPA (the "Administrator") to publish a list of air pollutants that he determines are hazardous ("hazardous air pollutants") and to prescribe an emission standard for each such pollutant. These emission standards are known as the National Emissions Standards for Hazardous Air Pollutants ("NESHAP").

10. Section 114(a) of the Act, 42 U.S.C. §7414(a), authorizes the Administrator to require any person who owns or operates any emission source or who is subject to any provision of the Act to provide information to the Administrator for the purpose of determining whether any person is in violation of the Act or to carry out any provision of the Act. [Appropriate if alleging a notice violation.]

11. Pursuant to Section 112(b) of the Act, 42 U.S.C. §7412(b) the Administrator designated asbestos as a hazardous air pollutant and promulgated the asbestos NESHAP. The asbestos NESHAP includes regulations governing the emission, handling and disposal of asbestos during demolition and renovation of asbestos-containing facilities.

12. Pursuant to Sections 112 and 114, the Administrator has promulgated requirements that the owner or operator of subject demolition or renovation operations provide written notice prior to commencing the work.

13. 40 C.F.R. §61.141 defines "demolition" as "the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations."

14. 40 C.F.R §61.145(a) states that 40 C.F.R. §§61.146 and 61.147, apply, with exceptions not relevant to this action, to each owner or operator of a demolition operation if the amount of friable asbestos materials in a facility being demolished is at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components.

15. 40 C.F.R §61.146 requires each owner or operator of a demolition operation where there is the regulated amount of asbestos to provide the Administrator of EPA with written notification of intention to demolish or renovate, setting forth specified information, at least 10 days prior to the commencement of the operation. Timely, complete, and accurate notices of demolition operations permit EPA to conduct efficient, unannounced inspections to ensure that work practice standards to prevent emissions of asbestos are being met. Such notices are particularly important due to the short duration of most demolition operations. [If EPA has delegated NESHAPS program to State, and if that delegation indicates that notice is to be given to the State rather than EPA, add explanatory ¶].

16. 40 C.F.R §61.147, in relevant part, requires each owner or operator to comply with certain work practices to prevent emission of particulate asbestos material to the outside air.

17. 40 C.F.R. §61.152(b) requires each owner or operator to "discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, transporting or deposition of any asbestos-containing waste material generated by the source . . ."

18. Section 112(c) of the Clean Air Act, 42 U.S.C. §7412(c), prohibits the emission of any air pollutant to which a NESHAP applies, from any stationary source, in violation of such NESHAP. Noncompliance with a NESHAP is a violation of Section 112(c) of the Act.

NESHAPS VIOLATIONS

19. At some time prior to March 17, 1987, Defendant APO hired Defendant XYZ to demolish a scotch tape store located at 1000 Main Street, Plain Dealing, Louisiana ("the facility").

20. On or about March 17, 1987, Defendants engaged in demolition activities at the facility. Said activities involved the demolition of a building containing friable asbestos material as defined in 40 C.F.R. §61.141.

21. The building being demolished contained a quantity of friable asbestos material in excess of 80 linear meters on pipes or 15 square meters on other facility components, and therefore the operation was subject to the asbestos NESHAP, 40 C.F.R. §61.140 et seq.

FIRST CLAIM FOR RELIEF

22. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

23. Defendants failed to provide prior written notice of intention to demolish the facility, in violation of 40 C.F.R. §61.146 and Sections 112(c) and 114(a)(1)(B) of the Clean Air Act, 42 U.S.C. §7412(c) and §7414(a)(1)(B).

SECOND CLAIM FOR RELIEF

24. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

25. On or about March 17, 1987, Defendants failed to remove friable asbestos materials from the facility before dismantling or wrecking activities began, in violation of 40 C.F.R. §61.147(a) and Section 112(c) and (e) of the Clean Air Act, 42 U.S.C. §7412(c) and (e).

THIRD CLAIM FOR RELIEF

26. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

27. Defendants did not ensure that the friable asbestos material remained wet until collected for disposal, in violation of 40 C.F.R. §61.147(e) and Section 112(c) and (e) of the Clean Air Act, 42 U.S.C. §7412(c) and (e).

FOURTH CLAIM FOR RELIEF

28. Paragraphs 1 through 21 are incorporated herein by reference.

29. Defendants discharged visible emissions to the outside air during the collection, processing, packaging, transporting, or deposition of asbestos-containing waste material generated at the facility. The defendants failed to use one of the disposal methods specified in 40 C.F.R. §152(b) (1), (2), or (3), thereby violating 40 C.F.R. §152(b) and Section 112(c) and (e) of the Act, 42 U.S.C. §7412(c) and (e).

RELIEF REQUESTED

30. Section 113(b) of the Clean Air Act, 42 U.S.C. §7413(b), authorizes the Administrator of EPA to commence a civil action for injunctive relief, or for the assessment of a civil penalty

of not more than \$25,000 per day of violation, or for both, whenever any person violates Section 112(c), (e), and 114(a)(1)(B) of the Clean Air Act, 42 U.S.C. §7412(c), (e), and §7414(a)(1)(B).

31. Unless restrained by an Order of this Court, Defendants may continue to violate the Clean Air Act, 42 U.S.C. §7401 et seq., and the asbestos NESHAP, 40 C.F.R. Part 61, subpart M.

WHEREFORE, plaintiff, United States of America, respectfully prays that this Court:

a. Enjoin each of the defendants from further violations of the Clean Air Act and the asbestos NESHAP, 40 C.F.R. Part 61;

b. Assess civil penalties of \$25,000 for each day of each violation by each defendant for violations of EPA's regulations and the Clean Air Act;

c. Award plaintiff its costs and disbursements in this action; and

d. Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMALGAMATED PROPERTY OWNERS,

INC. and

XYZ DEMOLITION CONTRACTORS,

INC.,

Defendants

Civil Action No.

CONSENT DECREE

Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), having filed a Complaint alleging violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, codified at 40 C.F.R. §61.140 et seq., and the Clean Air Act, 42 U.S.C. §7401 et seq., and requesting permanent injunctive relief and civil penalties;

And Defendants having duly filed an Answer denying the claims of the plaintiff; [if appropriate]

And Plaintiff and Defendants having agreed that settlement of this action is in the public interest and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this action, avoiding protracted litigation costs and expenses;

And Plaintiff and Defendants having moved this Court to enter this Consent Decree, subject to the provisions of 28 C.F.R. §50.7;

NOW THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and with no finding or admission of liability against or by Defendants, and upon consent of the parties to this Consent Decree, it is hereby Ordered, Adjudged, and Decreed as follows:

I.

JURISDICTION

This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§1331, 1345, and 1355, and 42 U.S.C. §7413(b) and over the parties consenting to this Consent Decree. Venue is proper in this Court. The Complaint states a claim upon which relief may be granted against Defendants.

II.

DEFINITIONS AND PARTIES

A. "Defendants" shall mean Amalgamated Property Owners, Inc., and XYZ Demolition Contractors, Inc.

B. "Plaintiff" shall mean the United States of America and the United States Environmental Protection Agency.

C. Terms used in this Consent Decree which are defined in 42 U.S.C. §7412(a), 42 U.S.C. §7602, 40 C.F.R. §61.02, and 40 C.F.R. §61.141 shall have the meanings contained therein.

III.
APPLICABILITY

A. The undersigned representatives of each party to this Consent Decree certifies that he or she is fully authorized by each party whom he or she represents to enter into the terms and conditions of this Decree, and to execute and legally bind that party to it.

B. The provisions of this Consent Decree shall apply to and be binding upon the Defendants, as well as their officers, directors, agents, servants, employees, successors, and assigns, and all persons, firms and corporations having notice of this Consent Decree and who are, or will be, acting pursuant to this Consent Decree, or on behalf of, in concert with or in participation with the Defendant to this action in furtherance of this Decree.

C. The provisions of this Consent Decree shall apply to all of Defendant APO's facilities in all states, territories, and possessions of the United States of America.

D. The provisions of this Consent Decree shall apply to all of Defendant XYZ's demolitions or renovations in all states, territories, and possessions of the United States of America.

E. Defendants shall condition any and all contracts for demolitions or renovations subject to this Decree during its effective period on compliance with the terms of this Decree.

IV.

COMPLIANCE PROGRAM

A. Defendants shall hereafter comply with the requirements of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos in 40 C.F.R. §61.140 et seq. Defendants shall submit written notification for demolition or renovation operations to be postmarked or delivered at least ten (10) days before each demolition or renovation begins if the amount of asbestos is as stated in 40 C.F.R. §61.145(a), or at least twenty (20) days before each demolition or renovation begins if the amount of asbestos is as stated in 40 C.F.R. §61.145(b).

B. In the case of an emergency renovation as defined in 40 C.F.R. §61.141, Defendants shall provide written notice to the appropriate EPA regional office and the appropriate delegated state or local air pollution control agency as early as possible prior to the commencement of any renovation operation involving asbestos. [Optional]

C. Defendant XYZ shall, on and after the date of entry of the Consent Decree, implement the office procedures set forth in Attachment 1 to this Consent Decree to ensure compliance with the notice requirements for demolition and renovation operations subject to the asbestos regulations, and shall use the notification format set forth as Attachments 2 and 3 to comply with this Consent Decree. [Optional, but suggested if there have been notice violations. See Attachments 1-3 of PC&J decree, attached as Exhibit B, as modified.]

D. All notifications required by this Consent Decree shall be sent by certified mail or hand delivery to the appropriate EPA Regional office and the appropriate delegated state or local air pollution control agency. Defendants shall maintain records of said notifications together with proof of mailing by certified mail for the duration of this Decree.

E. This Consent Decree in no way affects 1) the Defendant's responsibility to comply with any State, Federal or local laws or regulations or any Order by the Court, including compliance with all applicable NESHAPS requirements; and 2) enforcement of any such NESHAP requirements made applicable by reason of any revision of the Clean Air Act and its implementing regulations.

[Optional provisions. Sections I-III, "Notification", "Asbestos Control Program", and "Asbestos Training Program", attached, are recommended as targets for settlement with contractors where appropriate, such as multiple violations or situations in which the contractor has a large number of work crews and inadequate centralized management of them.]

V.

CIVIL PENALTY

Defendants shall pay a total civil penalty of \$ (penalty in accord with penalty policy). Said payment shall be in full satisfaction of Plaintiff's claims against defendants for the violation alleged in the Complaint in this action. Payment shall be made by cashier's or certified check payable to "Treasurer of the United States of America" and tendered within 30 days after final entry of this Decree to the United States Attorney for the Middle District of Louisiana, [Address]. Defendants shall send a copy of the check to the Office of Regional Counsel [Address], and to the Land and Natural Resources Division, U.S. Department of Justice [Address]. Civil penalty payments under this decree are not tax deductible.

[Optional provisions. Sections IV-VI attached are recommended if it is necessary to provide for an installment schedule for payment of civil penalties. An installment approach is appropriate only if defendants demonstrate that a lump sum payment is financially infeasible.]

VI.

CONTRACTOR DEBARMENT AND SUSPENSION

[Optional provision. Section VII attached, may be a useful negotiating tool against contractors which do business with the Federal government. However, the Office of Inspector General, Suspension and Debarment Branch (FTS 475-3960) should be consulted prior to making any commitments regarding suspension or debarment proceedings.]

VII.

STIPULATED PENALTIES

[At a minimum, should apply to violations of specific injunctive relief, such as training program or asbestos control program.]

A. Defendant XYZ shall pay stipulated penalties of \$ _____ per day per violation of any provision of Sections _____ of this Consent Decree.

B. All payments of stipulated penalties shall be made within thirty (30) days of the date of noncompliance by cashiers' or certified check made payable to the "Treasurer of the United States" and mailed to the United States Attorney [Address] District of Louisiana. A copy of the letter forwarding such check, together with a brief description of the noncompliance, shall be mailed to the Office of Regional Counsel, [Address] and to the Land and Natural Resources Division, U.S. Department of Justice.

C. Nothing contained herein shall be construed to prevent or limit the rights of the plaintiff to obtain any other remedy, sanction, or relief which may be available to it by virtue of Defendant's failure to comply with this Consent Decree, the Clean Air Act, or the asbestos NESHAP.

VIII.

FORCE MAJEURE

[Optional - may be inserted if demanded by Defendants. Section VIII attached is recommended.]

IX.

TERMINATION

This Consent Decree shall terminate 3 years from the date of its entry, provided the Defendant has complied with its terms, including the payment of any accrued stipulated penalties. The United States shall have the right to seek extension of this period in the event of any violation of the Decree. The Court will retain jurisdiction over this matter to enforce the provisions of this Decree.

X.

PUBLIC NOTICE

Each party consents to entry of this Consent Decree, subject to the public notice and comment requirements of 28 C.F.R. §50.7.

XI.

COSTS

Each party shall bear its own costs.

For Plaintiff - United States of America:

Assistant Attorney General
Land and Natural Resources Division
United States Department of Justice

Dated: _____

Assistant Administrator for
Enforcement and Compliance Monitoring
United States Environmental Protection
Agency

Dated: _____

Assistant United States Attorney
Middle District of Louisiana

Dated: _____

Trial Attorney
Land and Natural Resources Division
Environmental Enforcement Section
United States Department of Justice

Dated: _____

For Defendant XYZ Demolition
Contractors, Inc.

Dated: _____

For Defendant Amalgamated Property
Owners, Inc.

Dated: _____

ENTRY OF THE COURT

Judgment entered in accordance with the foregoing Consent
Decree this ____ day of _____, 1987.

BY THE COURT:

United States District
Judge

Model Consent Decree
Optional Provisions

I. NOTIFICATION

The notification provisions of this paragraph are in addition to, and are not a substitute for, the notification provisions of 40 C.F.R. §61.146.

A. Until the termination of this decree, XYZ Demolition agrees to do the following regarding any demolition and/or renovation project it undertakes, regardless of whether asbestos material is involved, where the dollar amount of XYZ's initial contract exceeds \$75,000.00 in either cash or services rendered.

1. XYZ Demolition will notify the Environmental Protection Agency (hereinafter called "EPA") and the corresponding or relevant State/local environmental agency of the demolition/renovation activity by XYZ.
2. Notifications made pursuant to Paragraph I(A)(1) shall include the information specified in 40 C.F.R. §61.146(c) and shall be submitted at least twenty (20) days prior to the commencement of the renovation and/or demolition work by XYZ or contractors hired by it to perform renovation and/or demolition work. The notification to the EPA shall be sent via certified mail to the United States Environmental Protection Agency, [Address].
3. In addition to the information required by 40 C.F.R. §61.146(c), each notification shall include:
 - (1) The name and position of the person responsible for supervising all work involving asbestos-containing material (ACM).
 - (2) The name, address, telephone number and contact person of the firm(s) which will transport any asbestos-containing waste from the site.

- (3) A description of the procedures and equipment to be used to prevent visible emissions of asbestos-containing material, and to decontaminate workers.
- (4) A description of the location and amount of ACM in the facility to undergo renovation or demolition.
- (5) The name of the person who determined whether asbestos-containing material (ACM) was located at the site and the basis on which such determination was made.

B. XYZ shall also include the information specified in Paragraph I(A)(3) in notifications submitted pursuant to 40 C.F.R. §61.146 concerning renovation/demolition projects involving asbestos where the value of the initial contract is less than \$75,000.00 in cash or services rendered.

C. The notice provisions of this Consent Decree do not eliminate or modify any obligation of XYZ to give notice to any state or local agency.

II. ASBESTOS CONTROL PROGRAM

A. Within sixty (60) days after final entry of this Decree by the Court, XYZ shall develop or have developed an asbestos control program (ACP). This plan will detail XYZ's procedures for complying with the Asbestos NESHAP, 40 C.F.R., Part 61, Subpart M. It also shall include procedures governing submittal of notifications required by this Decree.

B. As part of the ACP, XYZ shall designate an Asbestos Program Manager (APM) and an alternative APM. The APM will have the following duties and responsibilities:

1. Managing all asbestos control program activities, including the asbestos training program for XYZ.

2. Acting as the primary liaison between XYZ and EPA and/or any state/local air pollution control agency. The APM shall be responsible for ensuring that EPA and the appropriate state/local air pollution agency receives the proper notification.
3. Ensuring that each site is inspected prior to submittal of the notification discussed above to determine whether ACM is present.
4. Ensuring that decontamination facilities are available, equipped, and used at each job site involving removal of ACM.
5. Maintaining any records of any landfill receipts and reports of analyses performed on samples taken to determine the presence of ACM.

C. The president of XYZ will be responsible at all times for the APM's performance of his duties.

D. At each demolition and renovation project involving ACM, XYZ shall designate site-asbestos-supervisors who shall either be or who shall report to the ACM. XYZ shall have the right to designate different individuals as asbestos supervisor at a particular site on a day-to-day basis.

1. Each site-asbestos-supervisor shall have the primary responsibility for managing all asbestos activities at the work site.
2. The site-asbestos-supervisor will be the primary contact through which any employee at the site involved with asbestos removal shall receive guidance and instructions.
3. The site-asbestos-supervisor shall be the primary liaison between EPA and/or state/local inspectors and on-site employees.

4. The site-asbestos-supervisor shall immediately correct any violations of the Asbestos NESHAP he discovers. If an immediate remedy is not possible, the supervisor shall stop all asbestos removal activities until the violations are corrected.
5. The site-asbestos-supervisor shall have a copy of the written notification for that site in his possession while on-site.

E. XYZ shall take all reasonable steps to see that the employees engaged in removal, handling, and transporting activities follow all practices and procedures learned during the Asbestos Training Program (discussed in Section IV) and any written and/or oral instructions provided by the APM and/or the job site asbestos supervisor.

F. XYZ shall develop written Asbestos Policies and Procedures. The procedures shall address all of the requirements listed in this document and responsibilities of the APM, supervisors and employees. The policy shall provide that workers are encouraged to report any violations of the program or any Asbestos NESHAP (40 C.F.R. Part 61, Subpart M) to the Asbestos Program Manager or the site-asbestos-supervisor. The procedures shall detail how ACM is to be removed at a site facility and how ACM is to be disposed of.

1. These procedures shall be given to each employee and supervisor involved with asbestos activities.
2. These procedures shall be periodically reviewed by the APM and XYZ company officers and revised if necessary, based upon changes in the regulations, development of new removal techniques or any other reason necessary to ensure that all requirements are addressed.

G. XYZ shall submit its ACP to EPA for review and approval within seventy-five (75) days of the date this Decree is approved and entered as an order of the Court. If EPA requires changes in the ACP, EPA's comments shall thereafter be incorporated.

III. ASBESTOS TRAINING PROGRAM

A. XYZ shall develop and implement an Asbestos Training Program (ATP) for all company employees engaged in actual asbestos removal, handling, transportation and disposal activities, all foremen/supervisors of asbestos activities and an Asbestos Program Manager (APM) and an alternate as of the effective date of this Decree.

B. XYZ has chosen and will hire [trainer acceptable to EPA] to provide the ATP for the persons identified in Paragraph III(A). The ATP offered by [trainer] will consist of its regular "Worker Training" course plus all requirements of the Asbestos Control Program described in Paragraph II of this Decree. This course will cover, at a minimum, information concerning the background of asbestos; federal, state and city regulations; medical surveillance, health effects of asbestos, worker protection, air sampling and general and special work practices. XYZ will ensure that the course devotes at least three hours to actual asbestos removal techniques required by the Asbestos NESHAP, 40 C.F.R. Part 61, Subpart M.

C. XYZ will implement the ATP within 45 days of the entry of this Decree by the Court.

D. One year from the effective date of this Decree, XYZ will provide the training program identified in Section III(B) of this Decree to employees engaged in actual asbestos removal, handling, transportation and disposal activities who were hired by XYZ after completion of the initial training program. XYZ must complete this training program within 15 months of the effective date of this Decree.

E. Within 15 days of the training program's completion, XYZ must submit satisfactory evidence from the person who conducts the training program that each employee required above to be trained has successfully completed the ATP. The submissions shall be sent by certified mail to the United States Environmental Protection Agency, [Address].

IV. CIVIL PENALTY

A. Defendant shall pay a total civil penalty payment of \$_____ in _____ installments together with interest by cashier's or certified check payable to "Treasurer, United States of America" and sent by registered mail to the United States Attorney [Address] according to the following schedule.

- 1) \$_____ shall be paid within _____ days of final entry of this consent decree.
- 2) \$_____ shall be paid within _____ days of final entry of this consent decree, together with accrued interest at the specified rate.
- 3) Etc.

B. Interest shall accrue upon the unpaid balance at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of 52-week U.S. Treasury bills settled immediately prior to the time of the preceeding payment and shall be included in each subsequent payment under the schedule of payments set forth in sub-paragraphs A(2) and (3), above. Interest shall be computed from [time of first payment]. Thirty (30) days prior to the payments described in A(2) and (3), above, the U.S. Attorney's Office shall send a statement of interest due and owing for the upcoming payment.

C. The civil penalty payments made under this Consent Decree are not tax deductible. Upon final entry of this Consent Decree, the United States shall be deemed a judgment creditor for purposes of enforcement of this Decree.

V. ACCELERATION OF PAYMENTS

A. If the Defendant: (1) fails to make any payment in the time specified under this Consent Decree, or (2) files a voluntary petition in bankruptcy under the Bankruptcy Code of the United States, or (3) is adjudicated as bankrupt under such Code, or (4) is the subject of a petition filed in federal or state court for the appointment of a trustee or receiver in bankruptcy or insolvency, or (5) makes a general assignment for the benefit of creditors, then on the occurrence of any such conditions, at the option of the United States, the entire balance of the principal amount of civil penalty, together with all accrued interest at the rate specified above in paragraph B of Section IV of this Consent Decree, shall become immediately due and payable. Defendant shall also be liable for attorneys' fees and costs incurred by the United States as a result of the implementation of this acceleration provision.

B. Within five (5) business days after Defendant becomes aware of an occurrence of any of the events or conditions described in subparagraph V(A)(2)-(5) above, the Defendant shall give immediate written notice to the U.S. Environmental Protection Agency, [Address] and to the United States Attorney [Address] by certified first class mail, postage prepaid.

VI. GUARANTY

See Exhibit A attached hereto.

VII. CONTRACTOR DEBARMENT AND SUSPENSION

It is the policy of the Environmental Protection Agency (EPA) to do business only with responsible contractors. EPA contends it has the authority to debar or suspend irresponsible contractors from EPA-assisted, indirect procurement under 40 C.F.R. §32.100, et seq. and from direct Federal procurement under 48 C.F.R. §9.400, et seq. of the Federal Acquisition Regulation.

EPA agrees that it will not institute debarment or suspension proceedings against the Defendant based on the violations that underlie this Consent Decree as long as the Defendant complies with the terms and conditions of this Consent Decree. If EPA determines, after appropriate notice and an opportunity for a hearing pursuant to 40 C.F.R. §32.100, et seq. and 48 C.F.R. §9.400 et seq., that Defendant has breached the terms and conditions of this Consent Decree, then Defendant agrees that such breach may constitute a cause for debarment and suspension. In such case, if EPA initiates a debarment or suspension action, it may cite the violations which gave rise to this Consent Decree as causes for debarment or suspension, in addition to the violations of the Consent Decree.

VIII. FORCE MAJEURE

If any event occurs that causes or may cause delays in the completion of the activities described herein, XYZ shall within five days of its learning of such event notify the United States in writing of the delay or anticipated delay, describing in detail the precise cause or causes of the delay, the anticipated length of the delay, the measures taken and to be taken by XYZ to prevent or minimize the delay and the time-table by which these measures will be implemented. XYZ will adopt all reasonable measures to avoid or minimize any such delay. If the United States and XYZ agree that the delay, or anticipated delay, has been or will be caused by circumstances entirely beyond the control of XYZ and agree on the length of the delay, the time for performance hereunder will, with Court approval, be extended for a period equal to the delay resulting from such circumstances. If the United States and XYZ do not agree that the delay, or anticipated delay, has been or will be caused by circumstances entirely beyond the control of XYZ, and/or do not agree on the length of the delay, XYZ may submit the matter to the Court for resolution. In any such proceeding, XYZ shall bear the burden of demonstrating that the delay or anticipated delay, has been or will be caused by circumstances entirely beyond its control and of the necessity of the proposed length of the delay. Increased costs or expenses associated with implementation of the activities required by this Consent Decree and changes in economic circumstances of the defendants shall not be considered circumstances beyond the control of the defendants. XYZ shall be entitled to the benefits of this paragraph only if XYZ has given the notice of the delay or anticipated delay as set forth above in this paragraph.

Guaranty of Payment by Indorsers

1. In consideration of the payment schedule set forth in Section VI, Part A, of the consent decree filed in United States v. P.C. & J. Contracting Co., Inc., Civil Action No. C84-4141 (Northern District of Iowa) ("hereinafter the Decree") the undersigned indorsers jointly and severally unconditionally guaranty the payment of a \$105,000 civil penalty, together with interest at the rate specified in Section VI, Part B of the Decree, and all costs, expenses, and attorney's fees incurred in the collection of said civil penalty.
2. As payments are made pursuant to the payment schedule set forth in Section VI, Part A, of the Decree, the United States agrees to reduce indorsers' obligation and guarantee accordingly.
3. Indorsers' liability is independent of any other guaranties between Indorsers and any other parties' guaranties.
4. This guarantee is binding upon the Indorsers, their heirs, personal representatives, and assigns.
5. Indorsers waive any presentment, demand, protest, and notice of dishonor associated with this guarantee.

X
 Kreso P. Bezmalinovic,
 individually and as Vice President
 of PC&J Contracting Co., Inc.

X
 Nerina Bonic, wife of Kreso
 P. Bezmalinovic, individually,
 and as President of PC&J Contracting
 Co., Inc.

Sworn to and subscribed to, after presentation of
 photographic identification of above-undersigned indorsers,
 before me this 4th day of August, 1986.

Notary Public, State of Iowa
 My Commisison expires on
 1. August 1987
 Eric Larson Notary No. 1657

[Signature]
 Notary Public
 My Commisison expires on
1-1-1

(date)

TO: ALL OFFICE PERSONNEL

E.P.A. NOTIFICATION PROCEDURE FOR ALL DEMOLITION AND RENOVATION
JOB INVOLVINGASBESTOS REMOVAL

In order to meet strict compliance with E.P.A. notification requirements, the following procedure is now in effect and is to be followed for all demolition and renovation jobs. Note that one of the two notification forms (see attached) must be completed prior to beginning any demolition or renovation activity. The choice of the appropriate form will depend on the quantity of asbestos present.

1) On a demolition or renovation job involving the stripping or removal of less than 260 linear feet of asbestos material on pipes and less than 150 square feet of asbestos material on ducts, boiler tanks, reactors, turbines, furnaces, or structural members, the TWENTY DAY NOTICE form will be used. It must be postmarked or delivered at least twenty (20) days before demolition or renovation or any associated stripping or removal of asbestos material begins.

2) On a demolition or renovation job involving the removal of at least 260 linear feet of asbestos material on pipes or at least 150 square feet of asbestos material on other facility components, the TEN DAY NOTICE form will be used. It must be postmarked or delivered at least ten (10) days before demolition or renovation or any associated stripping or removal of asbestos material begins.

3) The original of the appropriate notification document shall be sent to the proper state agency or local air pollution control agency. A copy of the same notice shall be sent to the appropriate U.S. EPA regional office, ~~and to the Environmental Protection Agency, Stationary Source Compliance Division (EN-342), Regulations Analysis Section, Washington, D.C.~~ A copy of each document sent shall be kept in the job file.

(date)

(To the appropriate EPA regional office and the state or delegated local agency)

**TWENTY DAY NOTIFICATION OF ASBESTOS REMOVAL ACTIVITIES
PURSUANT TO 40 C.F.R. § 61.146**

Dear _____:

Pursuant to the requirements of 40 CFR 61.146, the following notification of impending asbestos removal is provided by P C & J Contracting Co., Inc., located at _____

FACILITY TO BE DEMOLISHED OR RENOVATED

Name of facility: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____

Name of owner: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____

Size of facility: _____
Age of facility: _____
Prior usage: _____
Demolition or renovation methodology: _____

ASBESTOS INFORMATION

Removal dates: _____ Start _____ Finish _____
Quantity on pipes (linear feet) _____
Quantity on other components (square feet) _____
Description of asbestos material: _____

Method of asbestos measurement: _____

Sincerely yours,

cc: U.S. Environmental Protection
Agency, Stationary Source
Compliance Division (EN-341)

(date) _____

(To the appropriate U. S. EPA regional office, and the state or delegated local agency)

**TEN DAY NOTICE OF ASBESTOS REMOVAL ACTIVITIES
PURSUANT TO 40 C.F.R. § 61.146**

Dear _____:

Pursuant to the requirements of 40 CFR section 61.146, the following notification of impending asbestos removal is provided by P C & J Contracting Co., Inc., located at _____.

FACILITY TO BE DEMOLISHED OR RENOVATED

Name of facility: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____

Name of owner: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____

Size of facility: _____
Age of facility: _____
Prior usage: _____
Demolition or renovation methodology: _____

ASBESTOS INFORMATION

Removal dates: Start _____ Finish _____
Quantity on pipes (linear feet) _____
Quantity on other components (square feet) _____
Description of asbestos material: _____

Removal emission control procedures: _____

DISPOSAL INFORMATION

Waste handling emission control procedures: _____

Disposal site name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Sincerely yours,

cc: U. S. Environmental Protection
Agency, Stationary Source
Compliance Division (EN-341)